

DECISION



J. W. Venter, 78-1
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

7865

FILE: B-191470

DATE: September 29, 1978

MATTER OF Reza Seyyedini Art and Film Production -
Reconsideration

DIGEST:

1. GAO has no authority under Freedom of Information Act to determine what information must be disclosed by other Government agencies.
2. There is no law or regulation which requires withholding offerors' identities from evaluation personnel. In negotiated procurement, where proposals were to contain no information regarding identity of offeror, whether evaluator knew offerors' identities from samples is not decisive because such knowledge does not automatically establish any impropriety in evaluation or selection.
3. Whether offeror's written proposal was evaluated by selection officials or only offeror's samples were evaluated is not deemed determinative of request for reconsideration since written proposal did not contain information which was subject to evaluation factors but was information relating to responsibility determination.

Reza Seyyedini Art and Film Production (Reza) has requested reconsideration of our decision Reza Seyyedini Art and Film Production, B-191470, August 21, 1978, 78-2 CFD 138, in which our Office denied Reza's protest against the award of a contract to Morgan-Burchette Associates, Inc. (MBA), by the Office of the Chief of Engineers, Department of the Army.

The contract was for the graphics and design work for four issues of "Water Spectrum" magazine, published by the United States Army Corps of Engineers.

Initially, Reza requests that our Office rule on the failure of the Army to provide Reza with certain documentation which it considered essential in pursuing its protest. These documents include such items as the technical evaluators' scoresheets. These were denied to Reza by the Army following a Freedom of Information Act (FOIA) request by the protester, but were furnished our Office and were considered in reaching our prior decision. Our Office, however, has no authority under FOIA to determine what information must be disclosed by a Government agency to the public and, therefore, there is no basis for us to review the Army's FOIA decision. DeWitt Transfer and Storage Company, 53 Comp. Gen. 533 (1974), 74-1 CPD 47.

Secondly, Reza disagrees with our prior decision's holding that MBA did not obtain an unfair advantage by reason of its status as a past contractor which has produced prior issues of "Water Spectrum." Through the submission of past issues of "Water Spectrum" as its sample of prior work, Reza alleges that MBA circumvented clause 4.2 of the solicitation, which required anonymity of offerors by the obliteration of any reference to the offeror in its sample. Reza argues that the evaluation team, comprised of the editors of "Water Spectrum," would have known the identity of MBA from the past issue submitted and that it was only human nature for them to judge their (the editors) past work as the best submitted and award MBA the highest technical points.

We note the solicitation contained no prohibition against the submission of prior issues of "Water Spectrum" as a sample of past work by an offeror. Also, there is no requirement in either the applicable procurement statutes or regulations that the identities of offerors in a negotiated procurement be withheld from an agency's evaluation and selection personnel.

See, in this regard, Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458), where the same allegation was made and we held that even if an offeror's identity was known by members of the evaluation panel, such knowledge would not be sufficient to preclude an award being made or establish that an award was improper.

Next, Reza states that, based on information contained in the Army's report on the protest, it is clear that the evaluators only considered the samples submitted by offerors and did not review Reza's written proposal which explained its experience and abilities over the last decade.

Reza's written proposal consisted of six pages and contained the following summary of its contents:

"This proposal statement will communicate the following information for the use of the project officer, the contracting officer and the evaluating team:

(1) A statement of understanding by the partners in joint venture undertaking to achieve the purpose of the contract.

(2) Details of intent to comply by providing all elements necessary to complete the scope of the work.

(3) Qualifications of personnel to be assigned to the project and the division of work.

(4) A record of previous projects responsibly completed by the individual, and firms represented as seeking to perform the work of this project."

Even assuming the technical evaluators did not consider Reza's written proposal in the evaluation, we fail to see how Reza was penalized. The evaluation factors listed in the solicitation (i.e., Creative Approach and Design Elements) did not cover any of the items contained in Reza's written proposal, which contained information more closely related to a responsibility determination (i.e., past experience).

Finally, Reza again challenges the contracting officer's determination that MBA's price was reasonable and points out that in the Army's report it was admitted that no Government estimate was prepared. However, our previous decision stated only that past procurements were used as a guideline, not that a Government estimate had been prepared. Moreover, Reza simply restates the argument which was considered in our prior decision.

Accordingly, our prior decision is affirmed.


Acting Comptroller General
of the United States